

WISCONSIN TAX BULLETIN

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CHANGE IN CORPORATE EXTENSION LAW

A corporation may now file its Wisconsin franchise/income tax return within the same extension period allowed for filing its corresponding federal income tax return. Chapter 214, Laws of 1975, which is effective for returns due on and after April 24, 1976, provides that the automatic three month extension and additional extensions available under the Internal Revenue Code for federal purposes will also be recognized for Wisconsin purposes.

The following two requirements must be met by a corporation using federal extensions:

1. If an automatic three month federal extension has been granted, a copy of the federal extension (Form 7004) must be filed with the Wisconsin franchise/income tax return.
2. If an additional extension has been granted by the Internal Revenue Service, a copy of such additional extension (Form 7005) must be submitted to the Department of Revenue within ten days of its receipt. A copy of Form 7005 should also be submitted with the tax return when it is filed.

Should the IRS, for any reason, refuse to grant an extension or terminate one previously granted, the Wisconsin franchise/income tax return will be due on the same date as the federal return.

Extensions of up to thirty days will continue to be granted by the Department if requested prior to the original due date of a return.

A Domestic International Sales Corporation (DISC) is required to file a federal annual information return (Form 1120 DISC). Under the Internal Revenue Code, this federal return is due on or before the 15th day of the 9th month following the end of the taxable year.

The DISC's Wisconsin return (Form 4 or 5) is due on or before the 15th day of the third month following the end of the taxable year. To extend the due date for filing the Wisconsin return, a DISC taxpayer must request a thirty day extension from the Department under s. 71.10 (5) (a). If a complete return cannot be filed by the due date, a tentative return must be filed by

such date or a thirty day extension may be requested and a tentative return then must be filed before the end of the extension period to avoid the imposition of late filing penalties.

Extensions and related correspondence, documents or remittances should be mailed to:

Wisconsin Department of Revenue
Post Office Box 98
Madison, Wisconsin 53701

TIM I-32, entitled, "Extension of Time to File Corporation Franchise/Income Tax Returns" and dated December 3, 1976, contains further information on corporate extensions.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Estate of Samuel Mavrogenis, Wisconsin Supreme Court (No. 75-80, Oct. 19, 1976). The decedent, Samuel Mavrogenis (who provided all the consideration) and his wife acquired 3 parcels of realty between 1945 and 1966 which they held in joint tenancy. In June 1973, when Mr. Mavrogenis was terminally ill, the properties were converted from joint tenancy with right of survivorship to tenancy in common. He then died on October 31, 1973.

Mrs. Mavrogenis, as the estate's personal representative, filed an inheritance tax return reporting the 3 parcels at one-half value. The Department subsequently assessed the parcels at full value contending that the conversions from joint tenancy to tenancy in common were transfers in contemplation of death under s. 72.12 (4) (a), Wis. Stats.

Following property law, the court found that the land was to be taxed at one-half value. It held that the husband owned an undivided one-half interest in the parcels both before and after the ownership change. Because with the change of title, the decedent did not divest himself of anything, there was no taxable transfer in contemplation of death. The Department will not appeal this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAX

Wage Continuation Payments—Section 16.31, Wis. Stats., provides for the payment of full salary to certain State of Wisconsin employes who are injured in the course of performing their official duties. The types of employes which are eligible for such benefit are enumerated in the statute. They can generally be described as those involving some hazardous duties. Examples include conservation wardens, state forest rangers, state patrol members, special tax agents and state probation and parole officers.

Upon request of the Department, the Internal Revenue Service has reviewed the status of payments made under s. 16.31. The IRS concluded the payments to be "in the nature of workers' compensation" and, therefore, excludable from gross income under Section 104 (a) (1) of the Internal Revenue Code. Since that section of the Internal Revenue Code applies in determining Wisconsin taxable income, the s. 16.31 payments are also not taxable for Wisconsin tax purposes.

SALES TAX

I. Gifts and Advertising Specialties

Persons who make gifts of personal property to others are the consumers of the property and the tax applies to the sale of the property to such persons. This includes

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sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers, and wholesalers who acquire such property to give to retailers for use in selling merchandise to customers.

For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is also liable for the tax measured by the tavern operator's purchase price of liquor given away to customers as free drinks. Wholesale liquor dealer's sales to liquor distillers' representatives, who promote the distiller's products by giving away samples to taverns and liquor stores in Wisconsin, are sales of promotional liquor which are subject to the sales tax. Samples furnished to doctors by drug manufacturers are self-consumed by the manufacturer, and the use tax applies to the cost of the ingredients.

When merchandise purchased for resale is used for any purpose other than resale, such as giving it away to customers or to a charity, the user (person who purchased for resale) becomes liable for the use tax based on the cost of the merchandise to the user.

II. Farming

A. Artificial Insemination Supplies

Persons who raise bulls to produce semen are considered farmers and are entitled to the exemptions contained in ss. 77.54 (3) and (3m), subject to the same allowances and restrictions as other farmers.

Machines used by the semen producer may qualify for the farmers' machinery exemption. Such machinery includes an electric dehorner, electric branding iron, ampule filling machine, ampule sealer and ampule printer.

Producers of semen must pay a tax to their suppliers when purchasing artificial insemination supplies and equipment if such supplies and equipment are used by the semen producers or their employees.

Such taxable supplies include insemination tubes, tube carriers, carrying cases, ampule racks, syringes, liquid nitrogen semen storage units, gloves, aprons, boots, brushes, boot buckets and stock tags.

Producers of semen may purchase any artificial insemination supplies and equipment listed above without paying sales tax by using a resale certificate if they resell these items to independent inseminators or directly to farmers. However, the producers are subject to the tax on their gross receipts from sales of those items to independent inseminators or farmers.

Ampules and canes containing the semen may qualify for the container exemption in s. 77.54 (6) (b) only if they are used to transfer semen to independent inseminators or to transfer semen sold directly to farmers who do their own inseminating. Ampules and canes used by the semen producers' technicians in performing an artificial insemination service are taxable.

B. Land Improvement Machines

Machines purchased by a farmer which are to be used by the farmer to dig drainage ditches or improve the contour of the farm land may qualify for the farmers' exemption under s. 77.54 (3).

C. Pesticides

Pesticides and fungicides, as defined in s. 94.67, may be purchased by farmers without tax under s. 77.54 (3m). Section 94.68 requires the registration of these products with the state Department of Agriculture.

Consequently, if the product used to sanitize milking equipment is registered as a pesticide or fungicide with the Department of Agriculture, it is exempt from the sales tax. Soaps and detergents which are not registered as pesticides do not qualify for the sales tax exemption.

D. Breeding and Raising Horses for Sale

Gross receipts from boarding recreational animals (such as ponies and riding horses) are subject to the sales tax. Boarding includes the regular daily service of feeding and/or other care of the animals. The receipts from a pasture rental, where the animals run free during the summer months, are not taxable if daily care is not provided.

A retailer who provides boarding service is not permitted to separately itemize the charge for feeding the animal and for providing quarters for the animal in order

to avoid paying sales tax on the portion of the receipts attributable to providing quarters. The entire boarding charge is taxable. However, the retailer may purchase animal food used to provide the boarding service without tax.

The following statement has been provided to representatives of a horse association:

Breeding and Raising Horses for Sale

"A person engaged in the business of commercial breeding and raising of horses for sale is a 'farmer' engaged in a farming activity under the law. He is entitled to purchase farm machinery, feed, seed and other items mentioned in ss. 77.54 (3) and (3m) of the statutes without tax by issuing a properly completed Farmer's Exemption Certificate to his supplier. Note the exemption does not apply to motor vehicles or trailers for highway use. The fact that this farmer may attend shows with his horses, in order to increase his revenues from stud fees or the sale of horses, would not affect his exempt statu

"Sales of riding horses, show horses and other recreational horses are taxable, except when sold to a person regularly engaged in the business of breeding such livestock for resale, provided such breeder is the holder of a Seller's Permit for the sale of horses. For this reason persons in this type of business should be registered with this department as retailers.

"Stud fees are not taxable, and the related charge for boarding the horse of another farmer while it is being bred is not subject to the tax. A farmer's use of his stallion for breeding purposes is not a use which results in a tax due on the purchase price of the stallion.

"The repeated use of these horses for recreational riding is a taxable nonfarming use."

III. Government and Exempt Institutions

A. Out-of-State Universities

Sales consummated in Wisconsin where property is sold to an out-of-state religious, charitable or educational organiza

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tion (such as the University of Iowa) may be made without tax under s. 77.54 (9a), as long as the seller is assured that the sale is to an exempt institution. Sales made to governmental units of other states are not exempt if delivery of the goods takes place in Wisconsin.

B. Purchases for Resale

Religious, charitable and educational organizations, and other exempt organizations that qualify for a "Certificate of Exempt Status" under s. 77.54 (9a) may purchase items without tax by using their exempt status number, even though the items purchased will be sold by the organization in an exempt occasional sale.

C. Nursing Home Meal Sales

An organization operates a registered nursing home and has other apartment facilities at the same location which are lived in by elderly persons not requiring special medical care. Meals are served to nursing home and apartment residents in the one dining room operated by the organization. All meals sold to residents of either facility are exempt from the sales and use tax under s. 77.54 (20) (c) 4.

IV. Installation

Charges for installing machinery, trade fixtures and other items that retain their status as personal property after installation are subject to the 4% sales tax. For example, installing trade fixtures (e.g. restaurant and tavern equipment) which retain their status as personal property is a taxable service and the total charge for labor and materials is taxable.

V. Lay-A-Way Charge

A retailer's special charge for holding a purchase, which amount is not applied against the purchase price, is not subject to the sales tax.

VI. Leases and Rentals**A. Lease with Option to Purchase**

A Wisconsin lessor leased road machinery to a nonresident who accepted delivery of the unit in Wisconsin. The nonresident immediately removed the machine to an out-of-state location where it was used in construction work. The lease contract contained an option to purchase provision.

While the unit is physically located out-of-state, the lease receipts are not subject to the Wisconsin sales or use tax. If the option to purchase is exercised while the unit is physically located out-of-state, the sale would not be subject to the Wisconsin sales or use tax.

If the factual situation were reversed, and the unit were leased to a person who used it in this state and then exercised the option to purchase while the unit was located here, the receipts from the lease and the sale (or purchase) would be subject to the Wisconsin 4% tax.

B. Fuel Provided with Leased Equipment

If a lessor's cranes are used exclusively for rental to others, the entire gross rental receipts are subject to tax. However, the parts, repair service, diesel fuel and lubricating oil used in the cranes may be purchased without tax by the lessor by furnishing Resale Certificates to suppliers.

C. Occasional Lease (Sale)

The continual leasing or renting of tangible personal property for a daily, weekly, monthly or other fixed period of time is a business or part-time business. It cannot be considered an exempt "occasional sale".

VII. Medical Professions**A. Dentists' Medicine Purchases**

Sales of nitrous oxide gas, oxygen or novocain to a dentist for treatment of patients qualify as exempt sales of "medicine" under s. 77.54 (14).

B. Clinics' Purchases

Many purchases made by medical clinics are subject to the sales or use tax. The following are partial lists of a clinic's taxable and tax exempt purchases. To be exempt, the

items on the exempt list must be furnished to patients at the direction of a physician, surgeon, podiatrist or dentist in conjunction with providing medical service, except for items noted with an asterisk (*). These items are exempt even though not purchased under the direction of such health professional.

<u>Taxable</u>	<u>Exempt</u>
Adhesive tape	*Artificial eyes & limbs
Alcoholic beverages	Bone pins & plates
Bandages, gauze & cotton	*Crutches & wheel chairs
Bed pans	* Dietary foods
Beds & linens	Disposable syringes containing medicine or insulin
Compresses & dressings	Dye
Cosmetics	*Hearing aids & parts
Deodorants & disinfectants	Medical oxygen
Diaphragms	Medicines
Distilled water	*Needles & syringes used by diabetics
Enema kits	Oral contraceptives
Instruments	Pacemakers
Laboratory equipment & supplies	Prescription drugs
Medical equipment	Prophylactics
Office equipment & supplies	Rubbing alcohol
Oxygen tanks	Suppositories
Paper products	Sutures
Printed material	Vaccines
Rib belts & supports	Vaginal creams & jellies
Soda water beverages	Vitamins
Soap	
Splints and cast materials	
Uniforms & gowns	
X-ray film & machines	

VIII. Motor Vehicles**A. Licensed Wholesalers of Motor Vehicles**

A wholesaler of motor vehicles is required to pay tax on vehicles which are used to conduct the business. However, acquisitions of vehicles for immediate transfer to retail dealers are exempt purchases for resale. Such wholesaler does not owe any tax even though it has Wisconsin motor vehicle distributor plates, if the plates are used only to deliver vehicles from the seller to a purchasing retail motor vehicle dealer.